

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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PROPOSED PETITION DECISION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (PETITION FILE NO. 496)

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on June 6, 2007, from Salvador Gonzales (Petitioner). The Petitioner requests the Board to amend the California Code of Regulations, Title 8, General Industry Safety Orders (GISO), with regard to the use of forklifts when unloading materials from trucks.

Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health, and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code Section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

SUMMARY

The Petitioner has been working for a counter top maker for seven years. He contends that many employees injure their backs lifting and handling heavy materials because companies do not always have a forklift. Therefore, the Petitioner is requesting the Board to amend the GISO to require forklifts or some other suitable means for lifting and handling heavy materials when unloading materials from trucks.

DIVISION'S EVALUATION

The Division's evaluation report dated September 6, 2007 states that the Petitioner proposes the use of one type of equipment (i.e. forklift) for loading and unloading of anything that has been placed on a truck. This proposal would regulate an activity that occurs thousands, maybe millions of times in California with many variables, such as location, type of cargo, weather, topography, etc.

The Division's evaluation report noted that the Petitioner's request is based on his personal experience working directly for a small company that manufactures laminated countertops, employing 3 to 4 workers. According to the Petitioner, he was employed for 6 years, 10 months,

and was involved in all aspects of laminated countertop production that included unloading trucks delivering particle board to be used in production. The Petitioner stated that deliveries would be made at least once per week, consisting of 50 – 60 units of 3/4" 4 x 8's, 4 x 10's and 4 x 12's particle board panels. The Petitioner, along with the owner, would unload these panels and place them in designated storage areas by hand. The Petitioner indicated that he has performed this type of work for the past 25 years and in previous employment a forklift was always available. The Petitioner is no longer employed with this company and is receiving medical treatment under Worker's Compensation for back injuries. According to the Petitioner, the owner has also received treatment for back injuries related to manually unloading the panels. However, the Petitioner knows of no other employees injured as a result of this task.

The Division's evaluation report states that currently, Title 8 standards do not require the use of any mechanical equipment for the loading/unloading of trucks. The only standards referring to loads is found in Sections 3703, 3704, and 4995 which regulate employees riding on loads and securing them against displacement.

The Division's believes that there is no question that improper loading/unloading techniques, lifting beyond one's physical capacities and, in body positions that create undue stress can lead to musculoskeletal injuries, falls and possibly heat stress. However, the Division maintains that current standards provide a protective framework for mitigating such hazards. Such standards include, but are not limited to, the following:

- Section 3203 – Injury and Illness Prevention Program (IIPP), requires that an employer develop procedures for identifying/evaluating workplace hazards and correcting discovered unsafe/unhealthful conditions.
- Section 3210 – Elevated Locations, requires guard railing, personal fall protection or other methods to protect workers at elevated locations above 4 feet.
- Section 3395 – Heat Illness Prevention, requires a program to evaluate, control and train employees to mitigate the health hazards associated with heat stress.
- Section 5110 – Ergonomics, requires an employer to develop a program that includes worksite evaluation, controls and training when certain triggers based on task, occurrence and causation have been met.

The Division's evaluation report contends that all of these standards, together with the Division's authority to issue Special Orders under Labor Code Section 6305 for specific places of employment with specific remedies, provide reasonable and effective, performance-oriented obligations to the regulated public to assess worksites and develop meaningful solutions to these hazards.

In addition, the Division's evaluation report believes that the only information that has been presented to support the need for rulemaking has been the Petitioner's own personal experience relating to his most recent employment. Although it is not the Division's intent to diminish the impact that this experience has had on the Petitioner, the Division does not believe that the information the Petitioner provided alone warrants the need for further rulemaking that would

impact many employers and employees alike. Therefore, the Division's evaluation report recommends denying this petition.

BOARD STAFF'S EVALUATION

Board staff prepared an evaluation report dated August 24, 2007, which concluded that there is insufficient evidence to support rulemaking to require the use of forklifts or some other suitable means for lifting and handling heavy materials and, therefore, recommends that this petition be denied. The Board staff report provides a summary of the rulemaking history related to Section 5110, Repetitive Motion Injuries, which Board staff believes is relevant to this petition.

The Petitioner states that one of the tasks he performed at his previous place of employment was to unload approximately 20 sheets of particle board, which ranged in size from 4'x8'x $\frac{3}{4}$ " to 4'x12'x1". The Petitioner and the owner individually carried one sheet at a time from a delivery truck to a storage area. This task was done approximately 2 to 3 times a week. The Petitioner states that this operation injured his back; however, he did not seek medical care. The Petitioner contacted the Division's district office; however, the Division stated it was unable to act on the Petitioner's complaint because the work practice the Petitioner was seeking to correct did not violate a standard. Consequently, the Division informed the Petitioner of the Board's petition process.

The Petitioner did not provide proposed language for a new or revised standard to prevent back injuries caused by manually lifting heavy materials. He also did not provide any data that identifies risk factors or unsafe conditions where the use of a forklift is necessary to prevent back injury. However, the Petitioner did state that it is possible a forklift might not be required if there were other suitable means available for handling heavy material. Board staff concludes that an evaluation of the Petitioner's concerns should consider possible revisions to Section 5110, Repetitive Motion Injuries, since there are no other standards that regulate in this area. Although a new vertical standard that applies only to lifting or material handling could also be considered, it would confront the same issues as an amendment to Section 5110 and could duplicate, and/or conflict with, the provisions of Section 5110.

Section 5110 is intended to prevent RMI caused by a repetitive job process or operation. Section 5110(b) requires every employer subject to this section shall establish and implement a program designed to minimize RMI. The program shall include a worksite evaluation, control of exposures which have caused RMI, and training of employees. Section 5110(c) provides that a measure the employer implements to comply with subsection (b) shall meet the employer's obligation under that subsection unless there is an alternative measure known to the employer that is substantially certain to cause a greater reduction in such injuries and does not impose additional unreasonable costs. The provisions of subsection (c) are sometimes referred to as the "safe harbor".

Section 5110 only applies when the provisions of subsection (a) are satisfied. These provisions, commonly referred to as "the two-injury trigger" are as follows:

(a) Scope and application. This section shall apply to a job, process, operation where a repetitive motion injury (RMI) has occurred to more than one employee under the following conditions:

- (1) Work related causation. The repetitive motion injuries (RMIs) were predominantly caused (i.e. 50% or more) by a repetitive job, process, or operation;
- (2) Relationship between RMIs at the workplace. The employees incurring the RMIs were performing a job process, or operation of identical work activity. Identical work activity means that the employees were performing the same repetitive motion task, such as, but not limited to, word processing, assembly or, loading;
- (3) Medical requirements. The RMIs were musculoskeletal injuries that a licensed physician objectively identified and diagnosed; and
- (4) Time requirements. The RMIs were reported by the employees to the employer in the last 12 months but not before July 3, 1997.

In order for Section 5110 to apply to the circumstances surrounding the lifting operation the Petitioner performed, subsection (a) would need to be substantially revised. A proposal to revise subsection (a) by eliminating the two injury trigger was given thorough consideration in connection with Petition 448, which the California Labor Federation submitted to the Board in August, 2002. In response to that petition, the Board directed Board and Division staff to convene an advisory committee to consider proposals that would eliminate the two injury trigger, the employer's obligation to address RMI under Section 3203, and administrative alternatives to improve enforcement of Section 5110. Stake holders failed to reach consensus on any of the major issues surrounding the petition.

The rulemaking record related to the adoption of Section 5110, the evaluation and discussion of the rulemaking proposals related to Petition 448, and the repeal of the federal and Washington State ergonomic standards demonstrate almost no agreement among the affected groups or knowledgeable experts on a means to effectively regulate the prevention of RMI. The Petitioner did not provide, and Board staff is not aware of, any new or additional, compelling, information which would support undertaking rulemaking action to amend Section 5110, or make a consensus agreement on an ergonomic standard any more likely now than in the past.

There continues to be support for the development of industry specific guidelines for ergonomic programs to prevent RMIs. There are now twenty ergonomic publications and posters available on the CalOSHA website. Just this year, the CalOSHA Consultation Service, in partnership with CNA Insurance Companies, Material Handling Industry of America, and the National Institute for Occupational Safety and Health published a 68 page document entitled *Ergonomic Guidelines for Manual Material Handling*. This publication contains information on risk factors, types of ergonomic improvements, and effective training. Board staff concludes that these types of informational resources are likely to be more effective at reducing the incidence of RMI in California than undertaking ergonomic rulemaking at this time. Board staff recommends the continued development of ergonomic publications that encourage employers to implement practical and effective ergonomic practices.

Therefore, Board staff concludes that there is insufficient evidence to support rulemaking to require the use of a forklift or some other suitable means for lifting and handling heavy materials, and therefore, recommends that the petition be denied.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Mr. Salvador Gonzales, Petitioner, to amend Title 8, General Industry Safety Orders, with regard to requiring forklifts when unloading materials from trucks. The Board has also considered the recommendations of the Division and Board staff. For the reasons stated in the preceding discussion, the Petition is hereby **DENIED**.

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